

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JACOB HEATH VANSLYKE, #189698

PLAINTIFF

v.

CAUSE NO. 1:17CV164-LG-RHW

PEARL RIVER COUNTY, ET AL.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DENYING MOTION TO DISMISS**

BEFORE THE COURT is the [86] Report and Recommendation of Magistrate Judge Robert H. Walker. Magistrate Judge Walker reviewed the [76] Motion to Dismiss filed by the defendant Wayne Grayson, M.D. Dr. Grayson requests dismissal because he was not properly served with process; although the U.S. Marshal Service stated that the summons was left at Dr. Grayson's residence, it was actually left with another person at the Pearl River County Jail where Dr. Grayson periodically works. Magistrate Judge Walker noted that this attempt at service was improper, but the pro se prisoner plaintiff in this case should not be charged with the U.S. Marshal's error. Accordingly, Judge Walker recommended that Dr. Grayson's Motion to Dismiss be denied while the U.S. Marshal Service attempts proper service of process. There has been no objection to the recommendation, and the time for filing an objection has passed. Therefore, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

After having reviewed the Report and Recommendation, the record in this

case, and the relevant law, the Court finds the Magistrate Judge's conclusions neither clearly erroneous nor contrary to law. The Court will deny the Motion to Dismiss at this time for the reasons stated by the Magistrate Judge.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [86] of United States Magistrate Judge Robert H. Walker entered in this cause on October 9, 2018, should be, and the same hereby is, adopted as the finding of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the [76] Motion to Dismiss filed by the defendant Wayne Grayson, M.D. is **DENIED**.

SO ORDERED AND ADJUDGED this the 31st day of October, 2018.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE